

Respondent contends claimant's testimony about the injury is not credible because claimant was terminated for absenteeism, did not report the injury when he came in to get his check, and did not report the injury when he saw his physician on July 21, 2000, even though July 14, 2000, was his last day of work. Respondent also offers the testimony of Mr. Ronald C. Quist who worked with claimant on his last day of work and testified claimant did not complain.

The issue in this appeal turns primarily on the credibility of claimant's testimony. If claimant is believed, his testimony supports a claim that the work for respondent aggravated a knee condition and is, therefore, a compensable injury. While respondent raises several issues tending to undermine claimant's testimony, the ALJ observed the claimant testify, believed the claimant, and awarded benefits. The Board generally gives some deference to the ALJ's evaluation of testimony for witnesses who he/she had the advantage of observing testify. In this case, respondent offers testimony that would directly contradict claimant's explanation for why he missed work after July 14 and offers evidence that claimant did not report the injury at times when one might expect he would, specifically when he picked up his check and when he went to the physician who treats claimant for hepatitis. Respondent also asks the Board to conclude claimant was unhappy with respondent because respondent terminated claimant. The Board recognizes respondent raises several points that tend to challenge claimant's testimony. But nothing in the evidence offers an alternative explanation for the injury, and claimant's explanation for injury from work is an otherwise logical one. Considering the total circumstances, the Board will rely on the ALJ's determination that claimant gave credible testimony.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark on September 5, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Vincent A. Burnett, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director